

House Bill 86 - 2011
(Teachers' Retirement System's Housekeeping Bill)

SECTION SUMMARY

Section 1 – Amends 19-20-101. Definitions.

(3) "Average Final Compensation" - amendment removes substantive statutory language from the definition section. Subpart (3) now only contains the simple definition of "average final compensation" and cross-references 19-20-805, the substantive provision pertaining to the determination of average final compensation.

(4) "Beneficiary" – amendment clarifies definition of "beneficiary," consistent with the substantive law pertaining to TRS and long-standing practice, to indicate that a beneficiary will be designated only by a member or retired member of the retirement system, and to clarify that a person designated as a joint annuitant is not a beneficiary.

(5) "Benefit Recipient" – a new definition for a term that has been used for many years in the substantive statutes pertaining to TRS, but has not previously been defined. Definition of the term provides clarity regarding what persons are included in the term as used in the statutes.

(7) "Earned Compensation" – amendment does not substantively modify what constitutes earned compensation, but clarifies the definition by removing redundant references to exclusions. Exclusions are now contained in a single list.

(9) "Full-time service" – amendments do not substantively change the standards long-applied by TRS for determining the full-time equivalency of members for purposes of awarding creditable service and determining the employment status of working retirees, but clarifies the definition in conformity with the manner in which the definitions are applied by TRS. With respect to alternative school calendars, the definition is amended to clarify that the alternative calendar will be used by TRS only if the alternative calendar has been reported to OPI as required by law, and then will be applied uniformly to all employees of the school district.

(11) "Joint Annuitant" – new definition used to identify a person designated by a retiring member as the recipient of all or a portion of an optional monthly retirement benefit upon the death of the retired member. Previously, joint annuitants were covered under the definition of "beneficiary." However, the status of a joint annuitant is considerably different from that of a beneficiary, and a substantial litigation issue arose due to a retired member's attempt to remove a joint annuitant by designating a new beneficiary. A member may revoke the designation of a beneficiary and designate a new beneficiary at the member's discretion. However, the designation of a joint annuitant is irrevocable except in very limited circumstances as set out in statute.

(15) "Part-time service" – the amended definition simply defines part-time service as service that is not full-time service under (9). Reiterating the standards for full-time service in the part-time service definition is confusing and provides opportunity for misconstruction.

(17) "Retired," "retired member," or "retiree" – amended definition adds additional variations of references to retired members used in the statutes as meaning the same thing as "retired member."

(18) "Retirement allowance" or "retirement benefit" – amended definition adds "retirement benefit," a term used in the statutes as synonymous with "retirement allowance" and adds "joint annuitants" as persons who may receive a retirement allowance/benefit.

(21) "Service" – amended definition removes reference to "instructional duties," a reference that is no longer used in statutes to describe duties that qualify a person for TRS membership.

(23) "Termination pay" – amended definition removes substantive statutory language that is not necessary in a definition and is already contained in the substantive provisions regarding termination pay.

(24) "Vested" – amended definition removes specific citation to code sections that pertain to contributions as the intent is that all contributions required under Title 19, chapter 20, must have been paid – the citation to specific statutes is unnecessary and provides opportunity in future for the list of contribution references to be incomplete.

Section 2 – Amends 19-20-102. Retirement system – policy.

(2)(a) Amendment removes the unnecessary word "retirement" to properly indicate it is the state's policy that retirement benefits are based on each member's normal service [~~retirement~~] and salary.

(3) New subpart requires that the Teachers' Retirement System and the Public Employees Retirement Board share confidential member information as necessary for either retirement system to ensure that public employees are reported to the correct retirement system.

Section 3 – Amends 19-20-203. Officers and employees of retirement board.

(1)(b) Amendment deletes archaic reference allowing the board to appoint a "secretary," which position has transformed to the current executive director position. The opportunity to appoint a secretary who is also a member of the Board was not maintained in the amended provision as such appointment would be contrary to the ethical and fiduciary duties of the Board.

Section 4 – Amends 19-20-208. Duties of employer.

(5) Clarifies that the monthly employer report must include detail regarding the time worked for each retired member employed by an employer and clarifies that reporting is required for a retired member employed in any position eligible to participate in the retirement system pursuant to 19-20-731, rather than limiting the reporting requirement to those retired members employed in a teaching, administrative, or faculty position. Those positions were specified at a point in time when only those types of positions were reportable to TRS, and the language was never updated to conform to current participation requirements.

Section 5 – Amends 19-20-305. Alternate payees – family law orders.

(3) Adds date of birth as data element required in a FLO to identify an alternate payee, in keeping with TRS practice and FLO forms.

(4)(a) Clarifies that a FLO may not require administration by the retirement system in a manner different from the administrative process utilized by the retirement system in general. We have seen many proposed FLOs that would require individual, hand processing or costly modifications to the retirement system's payroll system in order to administer benefits in the manner mandated by the FLO. Such processes, aside from being very costly to the retirement system in personnel time and system changes costs, provide substantial opportunity for mistakes that could result in overpayment of benefits, litigation costs, etc.

(4)(b) Removes very specific formula for calculating an actuarially equivalent amount as other formulas are legally reasonable and administratively feasible. Rather, simply requires that the amount of benefit to be transferred be expressed as a percentage share.

(6) Clarifies that the amount payable to an alternate payee upon withdrawal by the participant will be paid as a lump sum.

(7) Clarifies that benefit adjustments (GABAs) are apportioned between the parties where an actuarially equivalent amount is ordered in the same manner as the benefit is apportioned.

(12) New language makes clear that an actuarially equivalent benefit paid to an alternate payee terminates upon the death of the alternate payee; does not revert to the participant; and may not be devised in any manner.

(13) New language stating that TRS will give effect to a FLO in conformity with all other applicable law; that a FLO will not be construed to provide rights or benefits not expressly provided by law.

Section 6 – Amends 19-20-405. Limit on creditable service. Adds 19-20-426, pertaining to purchase of service under Optional Retirement Program, to the overall 5-year service purchase limitation.

Section 7 – Amends 19-20-701. Benefits. Language added indicates that if a person applies for retirement but dies before receiving the first benefit, benefits will be paid to the joint annuitant or beneficiary designated by the member in his/her retirement application, but will be paid in the manner provided in 19-20-1001 (as if the member died while an active member but before retiring). Similar language was previously in 19-20-702, the Optional Allowances, provision, but was never intended or applied to be limited only to circumstances where the member elects Option A, B or C, so is more appropriate in 19-20-701.

Section 8 – Amends 19-20-702. Optional allowances – certain period and life allowances. Amends provision caption to accurately reflect content of the statute. Removes language moved to 19-20-701 in Section 7, and updates for new defined term of joint annuitant.

(2)(d) clarifies that a beneficiary may not be designated once a joint annuitant has been named.

Section 9 – Amends 19-20-703. Payments to be monthly. Updates for use of definition of joint annuitant.

Section 10 – Amends 19-20-705. Correction of errors. In general, updates for proper use of terms "benefit recipient" and "alternate payee" and expands the retirement system's options for recovering amounts owed to the retirement system.

(1)(b) provides that the right to actuarially adjust benefits does not preclude the retirement system from pursuing other available remedies or penalties.

(1)(c) provides that the retirement system may withhold amounts owed to it from any benefits payable.

(1)(d) provides that the retirement system's right to recover amounts owed to it will have priority over claims of any benefit recipient or alternate payee.

Section 11 – Amends 19-20-715. ~~Compensation limit~~ Earned compensation – limitations. Amends catchphrase of provision to accurately reflect content of the statute.

(2) adds the word "earned" as the intent and application of the statute has always been to "earned compensation" as defined in 19-20-101, and not to "compensation" in general.

Section 12 – Amends 19-20-717. Effect of no designation or no surviving beneficiary or joint annuitant. Amends the statute to reflect use of new defined term "joint annuitant" and to remove and replace the term "payment recipient," as that term is not defined and is a placeholder for the defined terms "member" and "retired member."

Section 13 – Amends 19-20-721. Designation of beneficiary. Amends statute to clarify, consistent with substantive law and TRS practice, that only a member needs to or may designate a beneficiary, and changes reference to written notice of beneficiary designation from "written application" to "written election."

Section 14 – Amends 19-20-731. Postretirement employment limitations – cancellation and recalculation of benefits – reporting obligation of retired member.

(1)(a) removes specific list of employers and simply replaces with defined term "employer" so the list does not have to be updated if changes are made to defined term "employer."

(1)(b) clarifies that any amounts paid to a retired member by an employer, including the value of benefits other than those specifically excepted and amounts deferred to later years, will be counted against the maximum compensation an employed retiree may earn.

(1)(b)(i) clarifies that the health insurance premiums that will be excluded from counting against the maximum compensation are only for health insurance premiums paid directly by the employer for coverage provided by the employer.

(3)(a) replaces the term "canceled" with "suspended" as that is the appropriate terminology in light of enactment of 19-20-733 in 2009.

(3)(b) applies the clarification that employment status and compensation will be aggregate for all positions – see section 5

(4) clarifies definition of "employed in a position eligible to participate in the retirement system" and adds work performed or service provided as an independent contractor in order to account for all of the retirees we are seeing retire and then return to work with an employer as an independent contractor.

(5) clarifies that the employment status and maximum compensation will be the aggregate of all positions eligible to participate in the retirement system with all employers.

(6) requires a retiree who returns to work to give TRS written notice within 30 days of the postretirement employment. Statute currently requires the employer to report the working retiree, but places no obligation on the employee.

Section 15 – Amends 19-20-733. Resumption of employment by retired member – suspension of benefits. Updates for use of new defined term "joint annuitant."

Section 16 – Amends 19-20-805. ~~Earned compensation—part-time service~~ Calculation of average final compensation. Amends provision caption to accurately reflect content of statute, and adds substantive language regarding calculation of average final compensation that was removed from the definition of "average final compensation" in 19-20-101.

Section 17 – Amends 19-20-1001. Allowances for death of member prior to retirement. Amends the provision caption to accurately reflect the content of the statute.

(2)(c) clarifies the circumstances under which benefits will be paid to a beneficiary's estate.

(5) removes consideration for family law orders from description of how a beneficiary's benefit is paid in the circumstance of the death of the member, because the rights of an alternate payee are not the same as the rights of a beneficiary.

(6) clarifies that an alternate payee's legal rights under a FLO would take priority over the rights of a beneficiary.

Section 18 – Amends 19-20-1002. Payments upon death of retiree. Amends the statute to reflect use of newly defined terms "joint annuitant" and "benefit recipient," and to clarify payment of remainder benefits if the member and all such persons die.

Section 19 – Amends 19-20-1003. Payment of death benefits. Amends the statute to reflect use of defined term "joint annuitant."

Section 20 – Amends 19-20-1101. Withholding of group insurance premium from retirement allowance. Amends the statute to reflect use of defined term "joint annuitant."

Section 21 – Repeals 19-21-720. Minimum monthly benefit allowance. The statute was enacted as a one-time benefit adjustment in 2001 to apply to benefits being paid as of July 1, 2001 (raised the benefit to \$600 if it was lower). Since the statute will never again be applicable, it needs to be repealed.

Section 22 – Effective date. July 1, 2011.